

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
The Lawyers Cooperative Publishing Company :  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Corporation :  
Franchise Tax under Article 9A of the Tax Law for :  
the Years 1977 - 1979. :  
\_\_\_\_\_:

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon The Lawyers Cooperative Publishing Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

The Lawyers Cooperative Publishing Company  
Aqueduct Building  
Rochester, NY 14694

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
18th day of January, 1984.

Daniel Parchuck

Quinn A. Haggard  
pursuant to Tax Law section 174

Authorized to administer oaths

STATE TAX COMMISSION

Authorized to administer oaths

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

January 18, 1984

The Lawyers Cooperative Publishing Company  
Aqueduct Building  
Rochester, NY 14694

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
David M. Schraever  
Nixon, Hargrave, Devans & Doyle  
Lincoln First Tower, P.O. Box 1051  
Rochester, NY 14603  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THE LAWYERS COOPERATIVE PUBLISHING COMPANY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Franchise Tax on Business Corporations :	:	
under Article 9-A of the Tax Law for the Years	:	
1977, 1978 and 1979.	:	

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Petitioner, The Lawyers Cooperative Publishing Company, Aqueduct Building, Rochester, New York 14694, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1977, 1978 and 1979 (File No. 34049).

On October 28, 1982, petitioner's representative, Nixon, Hargrave, Devans & Doyle, Esqs. (David M. Schraever, Esq., of counsel), executed on petitioner's behalf a waiver of formal hearing. Petitioner's representative and the representative of the Audit Division, Paul B. Coburn, Esq. (Thomas C. Sacca, Esq., of counsel), executed a stipulation of facts, and further agreed that the decision of the Tax Commission was to be based upon said stipulation with the accompanying exhibits, and the briefs of the parties submitted on or before January 11, 1983.

ISSUES

- I. Whether the Audit Division properly required petitioner to file combined franchise tax reports with its wholly-owned foreign subsidiary.
- II. Whether petitioner is entitled to the eligible business facility credit and the investment tax credit with respect to the same facility.

FINDINGS OF FACT

1. For the fiscal years January 1, 1977 through December 30, 1977, December 31, 1977 through December 29, 1978, and December 30, 1978 through December 28, 1979, petitioner, The Lawyers Cooperative Publishing Company ("LCP"), filed franchise tax reports in a timely manner. Not included therein was Bancroft-Whitney Company ("BW"), its wholly-owned subsidiary which is not qualified to and does not do business in the State of New York.

2. On May 8, 1981, the Audit Division issued to petitioner a Notice of Deficiency for each fiscal year at issue, asserting additional franchise tax due under Article 9-A of the Tax Law, scheduled as follows:

<u>TAXABLE YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1977	\$111,626.00	\$29,871.12	\$141,497.12
1978	135,308.00	24,707.24	160,015.24
1979	197,898.00	19,314.84	217,212.84

The Audit Division determined that petitioner and BW should be required to file combined franchise tax reports for the following reasons:

(a) Petitioner's intercorporate charges to BW for printing and editorial costs amounted to 56-59 percent of the subsidiary's total cost of sales during the audit period.

(b) Consideration of petitioner's intercorporate sales and shipping charges to BW increased the percentage of intercorporate transactions during the audit period to 59-62 percent.

(c) Since the activities of petitioner and its subsidiary are unitary, and intercorporate transactions are not only substantial but result from an exclusive arrangement between petitioner and BW, combination is necessary to properly reflect petitioner's tax liability to New York.

Furthermore, as to taxable year 1979, the Audit Division determined that LCP was not entitled to claim both the eligible business facility credit and the investment tax credit with regard to the same facility and assets. (The Audit Division does not dispute that such facility and assets qualify for each of the credits considered individually.)

3. Petitioner was incorporated under the laws of New York on March 10, 1882. Its principal place of business is in Rochester, New York; and its principal business is writing, editing, publishing and marketing law books.

4. BW was incorporated under the laws of California, and its principal place of business is in San Francisco, California. BW is a wholly-owned subsidiary of petitioner and has been for many years. Its principal business is writing, editing, publishing and marketing law books, primarily in the western half of the United States.

5. (a) BW, with a current editorial staff of approximately 75 persons, has for more than 80 years produced law books and marketed them in the western half of the United States. Such publications are developed by BW exclusively, are of local or regional interest and are copyrighted by BW. For the years in question, on average approximately 52 percent of BW's gross sales receipts were from products that BW developed on its own or by contract with unrelated third parties.

(b) In addition, BW and LCP have for many years produced certain joint products consisting of major national publications. Both companies contribute to the editorial development of these products, and editorial costs are borne by each company proportionately. Both companies are considered to own these products, and copyrights to these publications are held jointly. Also, each company markets these products as its own products. Approximately 42 percent

of BW's gross sales receipts were from products jointly produced and marketed by BW and LCP.

(c) Approximately 6 percent of BW's gross sales receipts were from the sale of products developed by, and acquired by BW from, petitioner.

6. Petitioner's manufacturing division, located in Webster, New York, composes, prints and binds BW products. (The only BW publications not printed, bound and inventoried in Webster are the California Reports which must, by law, be printed in California.) BW is charged by petitioner for manufacturing services at a price that is competitive with comparable market prices.

7. The chart set forth in the appendix displays BW's expenditures for the years at issue and the portion thereof charged BW by its parent corporation.

8. BW's receipts for the tax years in question were:

<u>Year</u>	<u>Receipts</u>
1977	\$24,641,245
1978	\$27,171,827
1979	\$28,551,307

9. Petitioner's receipts for the tax years in question were:

<u>Year</u>	<u>Receipts</u>
1977	\$42,390,692
1978	\$45,487,583
1979	\$49,949,940

#### CONCLUSIONS OF LAW

A. That subdivision 4 of section 211 of the Tax Law, in pertinent part, provides:

"In the discretion of the tax commission, any taxpayer,...substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations..., may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the tax commission may require; provided, however,...that no combined report covering any corporation not a taxpayer shall be required unless the tax commission deems such a report necessary, because of

intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision five of this section, in order properly to reflect the tax liability under this article."

The regulations promulgated under section 211 and effective for taxable years commencing on or after January 1, 1976 provide, in relevant part:

"In deciding whether to permit or require combined reports the following two (2) broad factors must be met:

- (1) the corporations are in substance parts of a unitary business conducted by the entire group of corporations, and
- (2) there are substantial intercorporate transactions among the corporations." 20 NYCRR 6-2.3(a).

The regulations further state:

"(b) In deciding whether each corporation is part of a unitary business, the Tax Commission will consider whether the activities in which the corporation engages are related to the activities of the other corporations in the group, such as:

- 1) manufacturing or acquiring goods or property for other corporations in the group; or
- 2) selling goods acquired from other corporations in the group; or
- 3) financing sales of other corporations of the group.

The Tax Commission will consider a corporation to be a part of a unitary business if it is engaged in the same or related lines of business as the other corporations in the group, such as:

- 4) manufacturing similar products; or
- 5) performing similar services; or
- 6) performing services for the same customers.

"(c) In determining whether the substantial intercorporate transaction requirement is met, the Tax Commission will consider only transactions directly connected with the business conducted by the taxpayer, such as described in paragraph (1), (2) or (3) of subdivision (b) of this section. Service functions, such as accounting, legal and personnel will not be considered. The substantial intercorporate transaction requirement may be met where as little as fifty percent (50%) of a corporation's receipts are from any qualified activities." 20 NYCRR 6-2.3.



Petitioner does not argue that it and BW do not constitute a unitary business, but rather, that there is an absence of both distortion of tax liability and substantial intercorporate transactions.

B. That it seems clear that at least 50 percent of BW's receipts were generated by the sale of products developed and manufactured by LCP. Nearly all of BW's gross sales receipts were derived from sales of publications composed, printed and bound by LCP, and further, LCP participated in the editorial development of certain publications sold by BW. In its brief, petitioner compares BW's receipts with intercompany charges made to it by its parent for manufacturing and selling services rendered and concludes that intercompany transactions constituted 30 percent or less of BW's receipts. This comparison is irrelevant in ascertaining the proportion of the subsidiary's receipts generated by qualified activities: it juxtaposes the parent's receipts (intercompany charges) with BW's receipts.

The ultimate question, however, is whether "under all of the circumstances of the intercompany relationship, combined reporting fulfills the statutory purpose of avoiding distortion of and more realistically portraying true income [citation omitted]." Matter of Coleco Industries, Inc. v. State Tax Comm., 92 A.D.2d 1008, 1009 affd. mem., 59 N.Y.2d 994. Combined reports are not required here to achieve a proper and accurate reflection of petitioner's income; indeed, petitioner charges BW a competitive price for manufacturing services performed for BW at petitioner's manufacturing facility in this state.

C. That petitioner is not entitled to claim both the eligible business facility credit allowed by subdivision 11 of section 210 and the investment tax credit allowed by subdivision 12 of section 210 with respect to the same facility. Section 210, subdivision 12, paragraph (f) states, in relevant part:

"At the option of the taxpayer, ...an eligible business facility for which a credit is allowed under subdivision eleven of this section... may be treated as property principally used by the taxpayer in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing, provided the property otherwise qualifies under paragraph (b) of this subdivision, in which event, ...a credit shall not be allowed under such subdivision eleven..."


See also 20 NYCRR 5-1.4(d) and 5-2.6(c).


D. That the petition of The Lawyers Cooperative Publishing Company is granted to the extent indicated in Conclusion of Law "B"; the notices of deficiency issued on May 8, 1981 are to be modified accordingly; and except as so modified, the notices are in all other respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

# APPENDIX

## ANALYSIS OF BW's EXPENDITURES (in thousands)

	<u>TOTAL BW EXPENDITURES</u>			<u>LCP INTERCORPORATE CHARGES</u>		
	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>
<u>MANUFACTURING &amp; SELLING ACTIVITIES</u>						
Cost of Goods Sold	\$10,767	\$11,569	\$12,743	\$6,212	\$6,507	\$7,457
Sales Promotion	1,167	1,338	1,209	236	315	303
Sales Department	3,235	2,952	3,415	60	11	28
Shipping & Other	1,721	2,031	2,454	501	656	695
	<u>\$16,890</u>	<u>\$17,890</u>	<u>\$19,821</u>	<u>\$7,009</u>	<u>\$7,489</u>	<u>\$8,483</u>
Total Expenditures Incurred in Manufacturing & Selling of Goods to BW Customers				<u>41.5%</u>	<u>41.9%</u>	<u>42.8%</u>
LCP Charges to BW as Percent of Total Expenditure						
<u>OTHER ACTIVITIES</u>						
Administrative	\$ 1,663	\$ 1,648	\$ 1,657	\$ 318	\$ 338	\$ 346
Accounting & Data Processing	332	332	347			
Customer Service, Collection and Correspondence	977	1,305	1,136	113	126	107
Personnel	189	177	176			
Total Service Function Expenditures	<u>\$ 3,161</u>	<u>\$ 3,462</u>	<u>\$ 3,316</u>	<u>\$ 431</u>	<u>\$ 464</u>	<u>\$ 453</u>